

Assembly Joint Resolution No. 50

RESOLUTION CHAPTER 170

Assembly Joint Resolution No. 50—Relative to blood donation.

[Filed with Secretary of State September 11, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AJR 50, Bloom. Blood donation.

This measure would request that the President of the United States encourage, and that the Secretary of the United States Department of Health and Human Services adopt, policies that repeal the current donor suitability policies of the federal Food and Drug Administration regarding the donation of blood by men who have had sex with another man.

WHEREAS, California law prohibits discrimination against individuals on the basis of actual or perceived sex, sexual orientation, gender identity, and gender-related appearance and behavior; and

WHEREAS, The current federal Food and Drug Administration (FDA) donor deferral policy, first established in 1983 when the FDA had no way of testing blood or plasma for HIV, effectively prohibits blood donation by men who have had sex with another man even one time since 1977. The FDA essentially classifies all sexually active gay and bisexual men in the highest-risk blood donor category, the same category as IV drug users and people who have spent more than five years since 1980 in a country that has had mad cow disease. Even with a clean bill of health, a gay man is considered more of a threat to the blood supply than a straight man who was treated for chlamydia, syphilis, gonorrhea, venereal warts, and genital herpes within the past year. In 40 states, a man can even give blood immediately following a tattoo or 12 months after having sex with a prostitute; and

WHEREAS, The American Red Cross (ARC) has joined the American Association for Blood Banks (AABB) and America's Blood Centers (ABC) in asking for a reevaluation of current donor donation deferral policies; and

WHEREAS, The American Medical Association (AMA) voted on June 18, 2013, to oppose the decades long ban by the FDA finding it is discriminatory and not based on sound science, and recommends that each donor be evaluated on an individual basis and not based on their sexual orientation alone; and

WHEREAS, In May 2013, the nonprofit Canadian Blood Services, which manages that nation's blood supply, announced the repeal of the policy banning men who have had sex with another man from donating blood and the replacement of that ban with a deferral policy; and

WHEREAS, The nations of Argentina, Australia, Brazil, Hungary, Japan, Sweden, and the United Kingdom, among others, have adopted blood donor policies providing a 12-month deferral period for men who have had sex with another man. In addition, France, Spain, Italy, Russia, and Portugal have adopted blood donor policies that measure risk against a set of behaviors, sexual and otherwise, rather than the sex of a person's sexual partner or partners; and

WHEREAS, The AABB, ABC, and ARC, on March 9, 2006, at the Blood Products Advisory Committee of the FDA, at a workshop titled "Behavior-Based Blood Donors Deferrals in the Era of Nucleic Acid Testing (NAT)," issued a joint statement affirming that they believe that the current lifetime deferral for men who have had sex with other men is medically and scientifically unwarranted and recommended that the deferral criteria be modified and made comparable with criteria for other groups at increased risk for sexual transmission of transfusion-transmitted infections; and

WHEREAS, It does not appear rational to broadly differentiate sexual transmission via responsible male-to-male sexual activity from transmission via responsible heterosexual activity on scientific grounds. To many, this differentiation is unfair, creates stigma without any justifiable public health imperative, and results in negative attitudes to blood donor eligibility criteria and blood collection facilities; and

WHEREAS, Blood banks in the United States routinely operate with a short blood supply. After significant disasters or national emergencies, the AABB, ABC, and ARC have each reported regions operating with less than two days supply of blood; and

WHEREAS, Many men who have sex with men are healthy, do not present a risk of introducing a transfusion transmissible infection such as HIV into the nation's blood supply, and wish to be donors without compromising the safety or reliability of the supply. These men wish to join their neighbors in expression of a common altruistic form of civic engagement; and

WHEREAS, On July 11, 2014, a nationwide blood drive was held to bring attention to the current FDA deferral policy and help save lives; and

WHEREAS, Students and administrators have begun protesting the FDA policy, including one notable example from 2008 when San Jose State University president Don Kassing banned blood drives from the school's campus, writing in a memo to the campus community that the "FDA's lifetime blood donor deferral affecting gay men violates our nondiscrimination policy"; and

WHEREAS, The AABB, ABC, AMA, ARC, and the HIV Medicine Association (HIVMA) acknowledge the concern that a hasty relaxation of deferral criteria may add uncertainty to protection of the blood supply unless reliable data is available to avoid that result. The blood collectors are willing to assist in collecting data regarding the actual impact of changes in the deferral, in order to allow for informed decisionmaking, and for the development of additional, appropriate interventions to ameliorate the impact; and

WHEREAS, Technological advances such as individual NAT, pathogen inactivation, or added means of screening hold promise to substantially reduce the risk that transfusion transmissible infections from all donors, including men who have had sex with men, could be introduced into the blood supply, and federal advisory committees have encouraged the FDA to develop these technologies further. Within seven to 10 days, it can be said with 99.9 percent accuracy whether or not a blood sample is HIV-positive and the chance of an HIV-positive blood sample testing negative after the seven to 10-day window is about one in two million; and

WHEREAS, If the current men who have sex with another man ban on donation were completely lifted, the Williams Institute estimates that an additional 130,150 men would likely donate 219,200 additional pints of blood each year. That analysis also suggests that lifting the ban could increase the total annual United States blood supply by 0.6% to 1.4%, which may seem modest, but would occur in an environment where blood supply shortages are common; and

WHEREAS, In summary, the AABB, ABC, AMA, HIVMA, and ARC believe that the deferral period for men who have had sex with other men should be modified and that this consideration should also be extended to donors of human cells, tissues, and cellular and tissue-based products; and

WHEREAS, FDA guidelines followed by blood banks throughout the United States inadvertently create unjustified stigma directed towards gay, bisexual, transgender, and heterosexual males on the basis that they have had sex with another male since 1977; and

WHEREAS, The AABB, ABC, and ARC are required to follow the FDA guidelines, which consequently are in conflict with state nondiscrimination policies; now, therefore, be it

Resolved by the Assembly and the Senate of the State of California, jointly, That the California State Legislature calls upon the President of the United States to encourage, and the Secretary of the United States Department of Health and Human Services to adopt, policies that repeal the current donor suitability policies of the FDA regarding blood donation by men who have had sex with another man and, instead, direct the FDA to develop science-based policies; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of the United States Department of Health and Human Services, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, and to each Senator and Representative from California in the Congress of the United States.